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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------|------------------|
| 10/019,353   | 04/25/2002  | John Alfred Wilkinson | B0192/7033          | 1376             |
| 23628  | 7590        | 06/20/2005            | EXAMINER            |                  |
| WOLF GREENFIELD & SACKS, PC<br>FEDERAL RESERVE PLAZA<br>600 ATLANTIC AVENUE<br>BOSTON, MA 02210-2211 |             |                       | LEVY, NEIL S        |                  |
|  |             |                       | ART UNIT            | PAPER NUMBER     |
|  |             |                       | 1615                |                  |

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/019,353

Applicant(s)

WILKINSON, JOHN ALFRED

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 8, 9, 11-17, 19, 33 and 73-93 is/are pending in the application.
- 4a) Of the above claim(s) 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, 11-17, 19, 33, 73-85 and 87-93 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) all are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim ~~86~~ withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected <sup>species</sup>, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on page #8.

The 2<sup>nd</sup> paragraph rejection is withdrawn.

Claims 1-4, 8, 9, 11-17, 19, 33, 73-85 and 87-93 STAND rejected under 35 U.S.C. 103(a) as being unpatentable over Eini et al EP 049684 in view of Greff 6123953 or Sine et al 6183766.

Eini treats parasitic human and animal lice infestations with sage essential oils in gel formulations. Neither applicant nor Eini show any criticality, unexpected, or unobvious effects attributable to the use of any particular gel; synthetic or natural. Eini does contemplate carbomer; otherwise does not divulge gels, but the carbomer is merely an example of gels. Further, Eini shows how to screen potential actives for ectoparasite efficacy at Example 1.

Greff also applies gel skin compositions utilizing plant extracts (col. 4, lines 35-42) in the instant gels (col. 2, lines 15-25) and carbomeres (example 5).

Greff shows antimicrobial efficacy of the gel compositions.

Sine also applied gel skin compositions (col. 1, line 57-line 18, col. 2) utilizing plant extracts (col. 12, line 18-36) and carbomers in the instant gels (col. 11, lines 4-16, 62-66).

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It would have been obvious to a person of ordinary skill in the art at the time invention was made deriving utilize natural compounds to control pests, to utilize Eini, with the particular gel agents shown advantageous for topical use by Greff or Sine, in order to provide skin enhancing, cleaning antimicrobial or ectoparasite efficacy.

Applicant's arguments filed 2/25/05 have been fully considered but they are not persuasive. Applicant's arguments are directed to complaints of mon – analogous art, dismissing topical application as a basis for direction to references in view of the now required ectoparasite treatments. Burke is with drawn, as ectoparasites may well be present, but not addressed, in consideration of anti – viral aspects. However, the cited art remain as applicable, prior examiner is changed with considering references as a whole, as opposed to applicants' key word search. As indicated in the continued rejection we find one of ordinary skill in the topical infestation treatment arts well capable of considering alternative actives as available natural compounds and rephiler for gel application, as matter of preference and optimization off aesthetic, economic efficacious, stability and other considerations common to the art at least to the extent applicant provides antectoparasitic actives.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 Am to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neil Levy/af  
June 3, 2005



NEIL S. LEVY  
PRIMARY EXAMINER